



U.S. Department of Justice

Federal Bureau of Prisons

RECEIVED

DOCKET FILE COPY ORIGINAL

AUG - 11 1994

Office of the Director

Washington, DC 20534

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

FEDERAL BUREAU OF PRISONS
COMMENTS TO THE FEDERAL COMMUNICATIONS COMMISSION
IN THE MATTER OF
BILLED PARTY PREFERENCE
FOR INTERLATA COLLECT PHONE CALLS

FCC DOCKET NUMBER 92-77

These are the Federal Bureau of Prisons comments on the Federal Communications Commission (FCC) proposed rule to allow the billed party in a collect call to determine which long distance carrier transmits the call. Without an exemption for federal, state, and local correctional facilities I must strenuously object to the proposed rule.

The mission of the Bureau of Prisons is to protect society by confining offenders in the controlled environment of prison and community based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. Our mission is quite similar to the missions of state and local correctional agencies and organizations.

As the FCC is aware prisoners have no constitutional right to make telephone calls or to choose whether the calls are made collect, direct, or in some other manner. The privilege of making telephone calls must be controlled and managed by correctional professionals in order to protect the public, maintain security within the institution, supplement communications between the incarcerated with his/her family, and achieve other rehabilitative goals consistent with sound correctional management objectives.

By implementing the rule requiring Billed Party Preference (BPP) without an exemption for correctional facilities the FCC would substantially reduce the control of correctional professionals over their telephone systems and place control of this type of call in the hands of third parties. This action could provide greater opportunities for incarcerated persons to perpetrate inappropriate and criminal activity by introducing multiple live operators from multiple long distance carriers into the collect call process of prisoners.

In the past sophisticated prisoners have committed new criminal offenses while incarcerated by manipulating live operators and telephone systems. These crimes and abuses include, but are not

No. of Copies rec'd
List A B C D E

Quigley

limited to the introduction of weapons and contraband into a correctional facility; drug dealing; credit card fraud; wire fraud; extortion; victim or witness intimidation; false personation of a federal officer or employee; incurring large telephone bills; and the verbal harassment and abuse of telephone operators. Correctional professionals attempting to investigate such criminal activities will be faced with complex investigations involving multiple long distance telephone carriers and their staff. The interaction with multiple carriers will also lead to delays in detecting and correcting such problems.

Introduction of BPP at correctional facilities will hinder and possibly eliminate many of the fraud detection and security techniques currently being used at most federal facilities. These detection and security techniques are possible through the use of Customer Provided Equipment (CPE). As you are aware prisoner screening services are not available for CPE in most states. The lack of these screening services for our CPE has made it necessary to provide Automated Operator Services (AOS) for the collect call component of the inmate telephone system. AOS make it virtually impossible for prisoners to change their destination number, reverse charges, or redirect charges to a third party. AOS are actually superior to live operator screening services in that they cannot be manipulated to provide the above listed services. Manipulation of live operators is a common and ever-present technique of many prisoners.

The Bureau of Prisons provides AOS through a combination of the congressionally mandated FTS 2000 system and our own technology. If the Bureau of Prisons is mandated to provide BPP to prisoners we will most likely lose our CPE/FTS 2000 integrated security features including but not limited to, authorization codes and special answer signaling. This will be a step backward in our efforts to protect and serve the public interest.

The Bureau of Prisons is in the process of installing and implementing a new direct dial inmate telephone system which requires prisoners to be financially responsible for calls placed to members of the public. However, we continue to have a need to provide collect call service for incarcerated persons who have been detained but not convicted in our Federal Detention Centers and Metropolitan Correctional Centers. We also provide collect calling for prisoners who have been transferred from one institution to another for a limited time period.

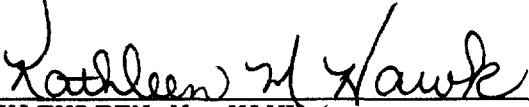
The limited amount of commissions generated by these collect calls is returned to a general prisoner trust fund which in turn uses the money for inmate recreation projects. It is highly likely that these funds would be lost if the Billed Party Preference is enacted without an exemption for federal, state, and local correctional facilities. The loss of any funds for these programs is significant in these times of shrinking agency budgets. However, this loss of revenue would be particularly

devastating to many state and local facilities and their ability to fund educational, vocational, and recreational programs. Many state and local correctional agencies rely heavily on revenues generated by inmate telephone systems to fund such programs. It follows that these rehabilitative components of corrections would be severely impacted.

I am aware that the FCC has recognized the special needs of federal, state and local correctional institutions in the past and hope this sensitivity to our mutual concerns about public protection, institutional security and administration, and rehabilitative goals will continue.

For further information on the Federal Bureau of Prisons telephone rules and regulations we would direct the Commissioners to the following materials, a copy of which are attached and incorporated into these comments: Federal Bureau of Prisons Telephone Regulations for Prisoners found at Title 28, United States Code, §§ 540.100 et seq.; Telephone Regulations and Inmate Financial Responsibility Federal Register Vol. 59, No. 64, Monday April 4, 1994, pp. 15812 - 15825; and Bureau of Prisons Program Statement No. 5264.05 Telephone Regulations for Prisoners, effective date May 4, 1994.

Respectfully submitted
FEDERAL BUREAU OF PRISONS


KATHLEEN M. HAWK
Director

Dated: August 1, 1994



Program Statement

OPI: CPD
NUMBER: 5264.05
DATE: April 25, 1994
SUBJECT: Telephone Regulations for
Inmates

EFFECTIVE DATE: May 4, 1994

1. **[PURPOSE AND SCOPE § 540.100.**

a. The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. An inmate may request to call a person of his or her choice outside the institution on a telephone provided for that purpose. However, limitations and conditions may be imposed upon an inmate's telephone privileges to ensure that these are consistent with other aspects of the Bureau's correctional management responsibilities. In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations set forth under the inmate financial responsibility program (see 28 CFR 545.11) and those which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction (see 28 CFR part 541).]

28 CFR 545.11 refers to the Program Statement on Inmate Financial Responsibility. 28 CFR part 541 refers to the current Program Statement on Inmate Discipline and Special Housing Units.

Contact with the public is a valuable tool in the overall correctional process. Toward this objective, the Bureau of Prisons provides inmates with several means of achieving such communication. Primary among these is written correspondence, with telephone and visiting privileges serving as two supplemental methods.

Although there is no Constitutional right for inmates to have unrestricted telephone communication, particularly when there are alternate methods of communication, the Bureau provides inmates with telephone access consistent with the requirements of sound correctional management.

[Bracketed Bold - Rule]

Regular Type - Implementing Information

Consistent with the provisions of this directive, Wardens are responsible for implementing and maintaining a telephone program within their institution. In establishing institution telephone programs, Wardens are to consider such variables as the size and complexity of their institution.

The Bureau of Prisons does not provide for inmates to send or receive facsimile communications.

[b. Except as provided in this rule, the Warden shall permit an inmate who has not been restricted from telephone use as the result of a specific institutional disciplinary sanction to make at least one telephone call each month.]

This subsection b. provides all inmates in Bureau of Prisons (BOP) custody, including those in Special Housing status, the opportunity to make at least one telephone call per month. The only limitation is when either the Unit Discipline Committee (UDC) or Discipline Hearing Officer (DHO) has specified loss of telephone privileges as a disciplinary sanction. The loss of commissary privileges does not include the loss of telephone privileges, as the loss of telephone privileges must be listed specifically as a separate sanction.

2. DIRECTIVES AFFECTED

a. Directives Rescinded

P.S. 5264.04 Telephone Regulations for Inmates (07/17/92)

O.M. 036-94 (5300) Inmate Telephone Regulations (03/16/94)

b. Directives Referenced

P.S. 1315.04 Inmate Legal Activities (07/23/90)

P.S. 1330.11 Administrative Remedy Procedure for Inmates
(10/29/93)

P.S. 1480.02 Contact with News Media (07/16/79)

P.S. 5265.08 Correspondence (10/01/85)

P.S. 5267.05 Visiting Regulations (07/21/93)

P.S. 5270.07 Discipline and Special Housing Units
(12/29/87)

P.S. 5380.02 Inmate Financial Responsibility Program
(05/15/91)

P.S. 7331.02 Pretrial Inmates (11/10/80)

c. Rules cited and/or referenced in this Program Statement are contained in 28 CFR part 540, subparts A-B, D, E, and I; 28 CFR 541, subparts A-B; 28 CFR part 542, subpart B; 28 CFR 543, subpart B, 28 CFR 545, subpart B, and 28 CFR 551, subpart J.

3. STANDARDS REFERENCED

a. American Correctional Association Foundation/Core Standards for Adult Correctional Institutions: FC2-4087, C2-4106, C2-4107, C2-4166.

b. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4259, 3-4260, 3-4263, and 3-4439.

c. American Correctional Association Foundation/Core Standards for Adult Local Detention Facilities: FC2-5089, C2-5150, C2-5151, C2-5226.

d. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-3D-21, 3D-22, 3D-23, 3E-02, 5D-09.

4. COURT INJUNCTION AFFECTING THIS PROGRAM STATEMENT. To comply with the Court injunction of October 13, 1993, this Program Statement provides that three different sets of procedures will be used at various Bureau institutions.

a. First set of procedures. The first set of procedures, discussed in Section 5 of this Program Statement, apply to institutions listed without an asterisk (*) in Attachment A, entitled Institutions Operating the Bureau of Prisons Trust Fund Inmate Telephone System (ITS). Because the ITS was fully operational in these institutions prior to the Court injunction of October 13, 1993, these institutions are covered by the stay of the injunction issued by the Court of Appeals on December 7, 1993.

b. Second set of procedures. Because the injunction was only stayed as to institutions where the ITS was fully operational on October 13th, the injunction remains in effect in other Bureau institutions. That injunction prohibits the Bureau from:

(1) implementing the ITS at any other institution unless a collect-call system substantially equivalent to the former collect call system is also made available to inmates;

(2) restricting collect calls to numbers on approved telephone lists;

(3) conditioning telephone privileges on participation in the Inmate Financial Responsibility Program; and

(4) using Commissary Fund proceeds to pay for the implementation of the ITS or the collect-call system.

Thus, to comply with the injunction, institutions where the ITS has not yet been installed must continue to operate their collect-call telephone systems as these were being operated prior to issuance of the injunction. Therefore, Section 5 of the Program Statement provides that telephone procedures applicable to ITS institutions do not apply to institutions which still have the collect call system.

c. Third set of procedures. The Bureau also has installed the ITS in several institutions (identified with an asterisk (*) on Attachment A of this Program Statement) after the issuance of the October 13th injunction. To comply with the injunction, however, no commissary fund proceeds were used, and the Bureau added an Automated Collect Call Operator System (ACCO) to the ITS so that these institutions have both the traditional ITS debit-billing system and a collect-call system substantially equivalent to the former collect-call system. To ensure continued compliance with the injunction, section ten and Attachment A of this Program Statement contain special provisions regarding collect-calling procedures at these institutions.

5. [PROCEDURES § 540.101.] The procedures set forth in this section apply to institutions listed without an asterisk (*) in the Institutions Operating the Bureau of Prisons Trust Fund Inmate Telephone System (ITS) (Attachment A). A second set of procedures apply to institutions exclusively under non-ITS collect calling systems. These institutions are to continue their current procedure, pending conversion to the debit billing system. A third set of procedures cover those institutions identified on Attachment A by an asterisk (*). These institutions are covered by the provisions of this section 5 as modified by the notes in Attachment A and by section ten. These institutions, which were converted to the debit billing system after October 13, 1993, provide unlimited collect calling through the Automated Collect Calling Operator System (ACCO).

[a. Telephone list preparation. An inmate telephone call shall ordinarily be made to a number identified on the inmate's official telephone list. This list ordinarily may contain up to 30 numbers. The Associate Warden may authorize the placement of additional numbers on an inmate's telephone list based on the inmate's individual situation, e.g., size of family.]

Placing additional numbers on an inmate's telephone list is within the Associate Warden's correctional discretion. While 30 numbers should meet the needs of the majority of inmates, there

may be isolated situations when additional numbers may be warranted. For example, an inmate who has a large family may wish to place additional family members on the telephone list. Additional numbers may also be warranted for an inmate who wishes to place both work and home telephone numbers for his or her spouse and grown children.

[(1) During the admission and orientation process, an inmate who chooses to have telephone privileges shall prepare a proposed telephone list. At the time of submission, the inmate shall acknowledge that, to the best of the inmate's knowledge, the person or persons on the list are agreeable to receiving the inmate's telephone call and that the proposed calls are to be made for a purpose allowable under Bureau policy or institution guidelines.]

The Telephone Number Request form, (BP S505.052) (04/94), (Attachment B) is to be used by an inmate to submit a list of up to 30 proposed names and telephone numbers to be included on his/her telephone list. It is not necessary to resubmit "Telephone Number Request" forms received prior to the date of this Program Statement.

Inmates may submit telephone numbers for any person they choose, including numbers for courts, elected officials, and members of the news media. Attorneys may be included on an inmate's telephone list with the understanding that these calls are subject to monitoring. Arrangements for unmonitored attorney calls must be separately made, as provided in Section 6.

An example of a call that would not be for a "purpose allowable under BOP policy or institution guidelines" is a call that violates a BOP regulation, such as conducting a business, which is a prohibited act under the Program Statement on Discipline and Special Housing Units.

[(2) Except as provided in paragraph (a)(3) of this section, telephone numbers requested by an inmate ordinarily will be placed on the inmate's telephone list. When an inmate requests the placement of numbers for persons other than for immediate family or those persons already approved for the inmate's visiting list, staff ordinarily will notify those persons in writing that their numbers have been placed on the inmate's telephone list. The notice advises the recipient that the recipient's number will be removed from the list if the recipient makes a written request to the institution, or upon the written request of the inmate, or as provided in paragraph (a)(3) of this section.]

Paragraph (a)(3) refers to Section 5.a.(3) of this Program Statement.

Immediate family members include mother, father, step-parent, brother, sister, spouse, children and step-children. Unit staff will review the inmate's proposed list of numbers for compliance with the provisions of this Program Statement and forward an approved Telephone Number Request form to Trust Fund staff in the Financial Management Office. Once unit staff have accepted the form for processing, it cannot be returned to the inmate or handled by another inmate.

It is possible that two or more individuals with a shared telephone number may disagree on whether to receive an inmate's call. Should staff become aware of this situation, the decision to place or maintain the telephone number on an inmate's list is to be based on the written position of the individual in whose name the telephone number is listed.

Once submitted by the inmate, an initial list will be processed ordinarily within 10 workdays.

Unit staff will send out the notice letter (Attachment C) to those individuals who are not immediate family or on the inmate's visiting list. The notice letter is sent ordinarily within five workdays after the number is placed on the inmate's telephone list. Unit staff are to indicate with a N/A, in the staff use portion of the Telephone Number Request form (Attachment B), those persons who will not receive a notice letter.

All written requests by an intended recipient for removal of his or her telephone number from the inmate's telephone list should be processed expeditiously. When a telephone number is removed (blocked) at the request of the intended recipient, that number may be placed back on the inmate's telephone list only upon receipt of a written request for reinstatement by the recipient.

[(3) The Associate Warden may deny placement of a telephone number on an inmate's telephone list if the Associate Warden determines that there is a threat to institution security or good order, or a threat to the public. Any disapproval must be documented in writing to both the inmate and the proposed recipient. As with concerns about any correctional issue, including any portion of these telephone regulations, an inmate may appeal the denial through the administrative remedy procedure (see 28 CFR part 542). The Associate Warden will notify the denied recipient that he or she may appeal the denial by writing to the Warden within 15 days of the receipt of the denial.]

The provisions of 28 CFR part 542 are contained in the Program Statement on Administrative Remedy Procedure for Inmates.

The Associate Warden's denial of any submitted telephone number shall be made on a case-by-case determination. There will be no blanket exclusions of telephone numbers for courts, elected officials, and members of the news media.

Once placed upon an inmate's telephone list, a number may be removed from the list (deleted) only upon the inmate's request, or upon the inmate's release, or to correct an administrative error. The number may be removed from usage (blocked) upon the written request of the recipient, or upon receipt of information leading to a determination by the Associate Warden that there is a threat to institution security or good order, or to the public. The recipient does not need to express reasons for his or her request to remove the number from the inmate's telephone list.

Upon receipt of a telephonic request for removal from a recipient, the Associate Warden may place a temporary suspension, not to exceed 20 work days, on an inmate calling that specific telephone number. The Associate Warden is to take reasonable steps to verify the identity of the person making the request (e.g., by calling the number to be removed (blocked).)

It is expected that the Associate Warden's authority to deny or remove (block) a number will seldom be required. One example when such correctional discretion will be exercised, however, is the telephone number for a victim or a witness, as identified on the PreSentence Investigation Report or as otherwise verified by staff. A second example, also for the purpose of maintaining security and good order, is when an inmate wants to call an inmate confined at another correctional institution. As with inmate-to-inmate correspondence (see 28 CFR 540.17, or current Program Statement on Correspondence), such contact requires the approval of both Wardens.

A third example when blocking is warranted for reasons of institution security and good order, or to protect the public, is for those telephone numbers assigned to any BOP institution, office, component or any telephone number of a recently separated or current BOP employee. These numbers may not be placed on an inmate's telephone list without the express written permission of the Warden. Further examples include numbers when it appears that the telephone communication may be for the purpose of facilitating an escape or the introduction of contraband, or upon the receipt of information from outside law enforcement agencies.

In addition to those limited situations when the Associate Warden denies placement, or authorizes the removal of a previously-placed telephone number, as outlined in subsection a.(3) above, telephone sanctions may be imposed pursuant to an institution disciplinary sanction. See Section 1.b. of this Program Statement.

Except as noted below, the Associate Warden is to notify the inmate of an administrative denial or removal of a telephone number ordinarily within three workdays following the denial or removal of the number, and is to notify the proposed recipient of the telephone call ordinarily within five workdays of the denial or removal. This notification may be reasonably delayed for law enforcement purposes, e.g., when the Associate Warden's decision is based on suspected criminal activity by either the inmate or the recipient of the call.

When a potential call recipient appeals the denial of a proposed number, the Warden is expected to respond ordinarily within 20 workdays of receipt of the appeal. Inmates may appeal a denial or removal decision through the administrative remedy procedure. See 28 CFR part 542, or current Program Statement on Administrative Remedy Procedure for Inmates.

(4) Copies of written documentation supporting the blocking of a telephone number (by request of the recipient or by decision of the Associate Warden, as provided in this section), should be forwarded to Trust Fund staff in the Financial Management Office.

[b. Telephone list update. Each Warden shall establish procedures to allow an inmate the opportunity to submit telephone list changes on at least a quarterly basis.]

An inmate is to use the Telephone Number Request form, (BP-S505.052) (04/94) (Attachment B) to submit updates to his/her telephone list. Unit staff shall approve update requests prior to submitting them to Trust Fund staff.

As specified in Section 11 of this Program Statement, each institution is to prepare an Institution Supplement setting forth its telephone procedures. The Institution Supplement shall provide information regarding time periods for submitting updates to the inmate's telephone list. All allowable updates should be processed ordinarily within 10 workdays.

Requests from inmates for corrections to telephone numbers already on an inmate's telephone list should be submitted on the Telephone Number Request form, (BP-S505.052) (04/94) (Attachment B) and should be processed as soon as possible, but no later than

10 workdays. Staff should instruct inmates to indicate with a "D" in the Add/Delete column, the number or other information that is to be corrected, and provide the corrected number or other information by indicating an "A" in the Add/Delete column.

Copies of telephone lists shall be maintained in section 3 of the inmate central file, along with correspondence relative to addition, changes, or removal of telephone numbers from the inmate's telephone list.

[c. Telephone access codes. An inmate may not possess another inmate's telephone access code number. An inmate may not give his or her telephone access code number to another inmate, and is to report a compromised telephone access code number immediately to unit staff.]

The phone access code (PAC) will be delivered to the inmate in a manner that ensures confidentiality of the PAC number; e.g., through regular institution mail in a sealed envelope. At the time of delivery, the inmate should also receive instructions for use of the PAC and any additional information necessary for making telephone calls. Staff are to advise the inmate not to give his or her PAC to another inmate, and to report a compromised PAC immediately to unit staff.

Because a PAC is considered an item of value for purposes of Inmate Discipline, the giving to another inmate or the possessing of another inmate's PAC falls within the moderate category (level 300) of prohibited acts.

[d. Placement and duration of telephone call. The placement and duration of any telephone call is subject to availability of inmate funds. Ordinarily, an inmate who has sufficient funds is allowed at least three minutes for a telephone call. The Warden may limit the maximum length of telephone calling based on the situation at that institution (e.g., institution population or usage demand).]

The placement and duration of any telephone call, including calls to a foreign country, is subject to the availability of inmate funds. The Institution Supplement should specify the permitted maximum length of each telephone call, ordinarily 15 minutes. A warning tone should be provided approximately one minute before the call is disconnected. When adequate trust fund telephone credits for a three-minute call are not available, the system will deny the call.

[e. Exception. The Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are

not limited to, inmates who are new arrivals to the institution, including new commitments and transfers; inmates confined at Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers; pretrial inmates; inmates in holdover status; inmates who are without funds (see § 540.105(b)); and in cases of family emergencies.]

28 CFR 540.105(b) refers to Section 9 of this Program Statement.

The following provisions ordinarily apply with respect to the placement of collect calls under this subsection e.

(1) Special arrangements should be made for new arrivals, that is, transfers and new commitments, to allow for the receipt of the inmate's resources. Where available, 30 minutes of collect calling capability may be provided for the first 30 days. Where not available, the current practice of allowing staff-assisted calls should be continued. After 30 days, an inmate who is without funds must request continued collect calling under the provisions of Section 9.b. of this Program Statement.

(2) Collect calls may be placed through the inmate telephone system by inmates at Metropolitan Correctional Centers, Metropolitan Detention Centers, Federal Detention Centers, for pre-trial inmates, and inmates in holdover status as a matter of routine procedure upon approval of the Warden and authorization by the Chief, Trust Fund Branch. The request for authorization shall be submitted in writing by the Warden and shall identify the specific need for such process and the proposed implementation procedure. The Warden may choose to exclude cadre inmates from the collect call provisions of this subsection.

(3) Collect calls may also be placed for inmates in protective custody units, under the same conditions as described in subsection (2) above.

The Institution Supplement should set forth, to the extent practicable, those situations where collect calls may be made and the procedures to follow for making these calls.

6. [MONITORING OF INMATE TELEPHONE CALLS § 540.102. The Warden shall establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the

proper procedures to have an unmonitored telephone conversation with an attorney.]

This notification is to be documented in the record using Form BP 408, Acknowledgement of Inmates. As part of the admission and orientation process, inmates are also to be advised of the procedures for placing unmonitored telephone calls. In addition, a notice is to be placed, in both Spanish and English, at all monitored telephone locations within the institution. This notice is to advise the user that all conversations from that telephone are subject to monitoring and that use of the telephone constitutes consent to this monitoring. The notice is to advise inmates to contact their unit team to request an unmonitored attorney telephone call.

The Special Investigative Supervisor (SIS) is responsible for ensuring that the notice is at all monitored telephone locations within the institution.

Requests for information (e.g., subpoenas) on monitored calls are to be directed to the Regional Counsel.

Staff members also are to be notified of the potential for monitoring of their telephone calls.

7. [INMATE TELEPHONE CALLS TO ATTORNEYS § 540.103. The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.]

The BOP provides each inmate with several methods to maintain confidential contact with his or her attorney. For example, inmate-attorney correspondence is covered under the special mail provisions; private inmate-attorney visits are provided; and the inmate is afforded the opportunity to place an occasional unmonitored call to his or her attorney. Based on these provisions, frequent confidential inmate-attorney calls should be allowed only when an inmate demonstrates that communication with his or her attorney by other means is not adequate. An example when other means of communication would not be adequate is when the inmate or the inmate's attorney can demonstrate an imminent court deadline. See the Program Statements on Inmate Correspondence and Inmate Legal Activities; these are codified in 28 CFR part 540, subparts A-B, and part 543, subpart B.

Staff are to ensure that the unmonitored calls they place on behalf of an inmate are to an attorney's office. As stated in

Section 9 of this Program Statement, third-party calls are not authorized.

8. [RESPONSIBILITY FOR INMATE MISUSE OF TELEPHONES § 540.104. The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. The Warden shall advise an inmate that violation of the institution's telephone regulations may result in institutional disciplinary action (See part 541, subpart B)].

Part 541, subpart B refers to the Program Statement on Inmate Discipline and Special Housing Units.

The Bureau of Prisons, including its institutions, will not assume responsibility for any calls that violate applicable statutes. As used in this section, the term "misuse" refers to such situations as using the telephone to intimidate a potential witness, or perpetuate a fraud, including the use of another inmate's PAC, or the providing of a PAC to another inmate.

Telephone privileges are accorded inmates who demonstrate a willingness to accept these privileges responsibly. Evidence that an inmate is violating the privilege of telephone use may cause the individual to be placed on the restricted telephone use list for such time as the Discipline Hearing Officer or Unit Discipline Committee deems appropriate. Specific care must be given during the orientation period and thereafter to help inmates understand their responsibility for using the telephone.

9. [EXPENSES OF INMATE TELEPHONE USE §540.105.

a. An inmate is responsible for the expenses of inmate telephone use. Such expenses may include a fee for replacement of an inmate's telephone access code that is used in an institution which has implemented debit billing for inmate telephone calls. Each inmate is responsible for staying aware of his or her account balance through the automated process provided by the system. Third party billing and electronic transfer of a call to a third party are prohibited.]

For institutions that have implemented debit billing, the Trust Fund Branch shall establish a fee for replacing an inmate's telephone access code. This fee shall not be greater than the replacement cost.

Consistent with the Bureau's correctional management objectives, and except as noted in this Program Statement, an inmate may not place calls to telephone numbers for which all the

actual expenses for the call cannot be directly and immediately deducted from the inmate's account. Examples include telephone calls to 1-800, 1-900, 1-976, or to credit card access numbers.

[b. The Warden shall provide at least one collect call each month for an inmate who is without funds. An inmate without funds is defined as an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days. The Warden may increase the number of collect calls based upon local institution conditions (e.g., institution population, staff resources, and usage demand). To prevent abuses of this provision (e.g., inmate shows a pattern of depleting his or her commissary funds prior to placing collect calls), the Warden may impose restrictions on the provisions of this paragraph b.]

An inmate who claims to meet the criteria for an inmate without funds should complete a Form BP-S148.70, Inmate Request to Staff, to apply to the unit manager for the privilege of receiving 30 minutes of collect calling capability for the month. An inmate's request for this collect call privilege should be processed within five workdays of receipt. An inmate without funds must reapply for the collect call privilege each month thereafter, and upon transfer to a new institution.

The 30 day period for the determination of trust fund account balance under \$6.00 is to cover the 30 days immediately preceding the determination of whether an inmate is without funds. The \$6.00 figure was selected as it is above the maintenance pay level.

If approved, the 30 minutes of collect calling must be used during the calendar month and at the institution where the inmate received it.

The unit team shall be responsible for monitoring compliance with the provisions of subsection 9.b. to prevent abuse.

(1) An example of abuse is an inmate who, on at least two occasions over the past six months, has shown a pattern of depleting his/her trust fund account in order to secure the special collect call privilege, and then replenishing the account.

(2) When the Warden determines that the inmate is abusing this provision, the Warden should hold the inmate accountable by imposing a restriction on this privilege, including but not limited to the following:

(a) reduce the amount of collect calling time for the month from 30 minutes to 15 minutes;

(b) reduce the amount of collect calling time for the month from 30 minutes to less than 15 minutes, but no less than five minutes;

(c) limit the inmate to one 15 minute call for the month;
or

(d) limit the inmate to one call no less than five minutes, but no greater than 15 minutes, for the month.

However, the Warden shall permit a minimum of one call per month unless the inmate has been restricted from telephone use as the result of a specific institutional disciplinary sanction.

The authority of the Warden under this section may not be delegated below the level of Acting Associate Warden.

The unit team shall be responsible for providing to Trust Fund staff notices of approved requests by inmates for this collect call privilege, and notices of specific restrictions imposed for abuses of this provision.

[c. The Warden shall limit the telephone privileges (collect and debit billed calls) of an inmate who has refused to participate in the Inmate Financial Responsibility Program (IFRP) as specified in 28 CFR part 545.]

28 CFR part 545 refers to the Program Statement on Inmate Financial Responsibility Program.

The provisions of subsection c. become effective January 3, 1995, and will allow the inmate no more than one telephone call per month, at the inmate's expense. Exceptions to this procedure may be made for good cause, e.g., emergency situations.

[d. The Warden may direct the government to bear the expense of inmate telephone use or allow a call to be made collect under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency.]

10. AUTOMATED COLLECT CALLING OPERATOR SYSTEM (ACCO). The procedures in this section apply only to those BOP institutions under the Court injunction which are operating the Trust Fund inmate telephone system with the added Automated Collect Calling Operator software system (ACCO). These facilities are listed in Attachment A and are indicated by an asterisk (*). For these

institutions, the following collect calling procedures shall supersede the references to collect calling procedures listed in Sections 5 and 9 of this Program Statement.

a. The provisions of Section 5.a. do not apply, as inmates will not be required to submit a list of telephone numbers in order to place a collect call. Collect calling shall not be restricted to numbers on the approved list for debit calls.

b. Section 5.d., first sentence, does not apply, as a minimum account balance is not required in order to place a collect call.

c. Section 5.e. does not apply because inmates can elect to make collect calls. The Warden may not limit calls to situations in which the inmate can show good cause. However, the Warden may continue to exercise his/her authority to place time limits on collect calls in order to ensure that all inmates have access to the telephone.

d. Section 9.b. does not apply because all inmates may elect to make collect calls, regardless of their trust fund account balances. The Warden may not limit collect calls because of the amount of money in an inmate's trust fund account.

11. INSTITUTION SUPPLEMENT. Each institution is to develop an Institution Supplement for operating its telephone program. At a minimum, and where applicable, each Institution Supplement is to include information concerning the following:

a. time periods for an inmate to submit updates to the inmate's telephone list, including provisions to ensure that each inmate has the opportunity to update the list at least once each quarter;

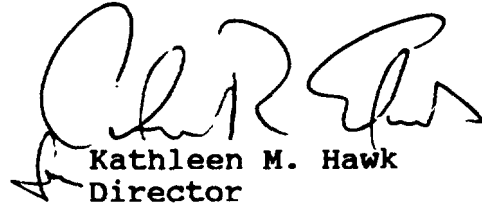
b. the maximum length of telephone calls, ordinarily 15 minutes;

c. inmate financial responsibility restrictions, to be effective January 3, 1995; and

d. those situations, to the extent practicable, when collect calls may be made and the procedures to follow in making those calls.

For those institutions with debit billing, the Institution Supplement should also include information on use of the PAC and what to do in the event the PAC is lost or stolen.

Prior to issuance, a copy of the Institution Supplement is to be forwarded to the Regional Correctional Programs Administrator for review. The Warden shall distribute the final Institution Supplement to staff and inmates.



Kathleen M. Hawk
Director

INSTITUTIONS OPERATING THE BUREAU OF PRISONS
TRUST FUND INMATE TELEPHONE SYSTEM (ITS)

FPC ALDERSON	USP LOMPOC
FPC ALLENWOOD	FCI LORETTO
LSCI ALLENWOOD	FCI MANCHESTER
MSCI ALLENWOOD	USP MARION
* HSCI ALLENWOOD	FCI MARIANNA
USP ATLANTA	** FCI MILAN
* FCI BASTROP	FPC MILLINGTON
FPC BIG SPRING	FCI MORGANTOWN
FCI BUTNER	FDC OAKDALE
FCI DUBLIN	FCI OAKDALE
FPC DULUTH	FCI OXFORD
FCI ENGLEWOOD	FCI PETERSBURG
* FCI ESTILL	FCI PHOENIX
FCI FAIRTON	FCI RAYBROOK
* HSCI FLORENCE	FMC ROCHESTER
MSCI FLORENCE	FCI SANDSTONE
FCI FT DIX	FCI SCHUYLKILL
FPC FT WORTH	FCI SHERIDAN
FDC GUAYNABO	USMCFP SPRINGFIELD
FCI JESUP	FCI TALLAHASSEE
USP LEAVENWORTH	USP TERRE HAUTE
FCI LOMPOC	FCI TEXARKANA

* These institutions are authorized unlimited collect calling through the Automated Collect Call Operator (ACCO).

* * The Detention Unit at FCI Milan is authorized unlimited collect calling through the ACCO.

NOTE: Until pending litigation is resolved, the Detention Unit at FCI Milan (**) and the institutions identified by an asterisk (*) above may not restrict inmates' ability to place collect calls through the ACCO. Specifically, inmates must be permitted to make an unlimited number of collect calls, as they were permitted to do under the former collect call system, and collect calls may not be limited to numbers on the inmates' approved telephone lists. See section ten of this Program Statement for the specific procedures with ACCO.

BP-8505.052 TELEPHONE NUMBER REQUEST - INMATE COFRM

April 1994

U.S. Department of Justice

Federal Bureau of Prisons

I am requesting that the following names and telephone numbers, be placed on my telephone list. I state that to the best of my knowledge, the persons on this list are agreeable to receiving my call and that telephone calls to those persons will be made for purposes allowable under Bureau policy and institution guidelines. I understand that submitting more than 30 numbers requires the approval of the Associate Warden.

Register No.	Inmate Name (Print)	Unit
--------------	---------------------	------

Inmate Signature	Date
------------------	------

You will be notified by a member of your unit staff if a telephone number is not placed on your telephone list.

A=Add D=Delete	Area Code Telephone Number	Name / Relationship	Street Address City / State / Zip Code / Country	STAFF USE: Date Notice Letter Sent
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

Use additional sheet(s) for more than 10 requests at this time.

Please complete for use by Trust Fund Staff: ☐ Non-English Speaking

Reviewed by Unit Staff Member (Printed Name & Signature)

Date

PLACE ON INSTITUTION LETTERHEAD

DATE

NAME
STREET
CITY, STATE ZIP CODE

Re: INMATE NAME

REGISTER NUMBER

DEAR :

The above-named inmate has submitted your telephone number for placement on the list of telephone numbers the inmate wishes to call. To allow such communication to occur at the earliest possible time, we have placed your name and telephone number on the inmate's telephone list.

As required by our procedures, the inmate has informed us that you are agreeable to such communication. If this is not the case, please let us know by completing the portion below and returning this letter. Upon your written request, we will remove your name and number from the inmate's telephone list. Absent this request, your name and number will be removed only upon request of the inmate or if the Associate Warden determines that the telephone communication poses a threat to institution security or good order, or poses a threat to others.

If you have any questions on this matter, please let me know.

Sincerely,

NAME
TITLE
TELEPHONE NUMBER

I, _____, do not wish to receive telephone calls
(print name)
from the above-named inmate. I request my telephone number be
removed from this inmate's telephone list.

date

signature

RECEIVED
AUG 11 1994

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 540 and 545

[BOP-1004-F]

RIN 1120-AA06

Telephone Regulations and Inmate Financial Responsibility

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons ("Bureau") is amending its rule on Telephone Regulations in order to provide for the operation of the Inmate Telephone System ("ITS") and to clarify references to loss of telephone privileges under institutional disciplinary sanctions. This document also amends the Bureau's rule on the Inmate Financial Responsibility Program as it relates to telephone privileges.

These amendments are intended to further the Bureau's core value of sound correctional management both by recognizing the role of inmate financial responsibility and by further minimizing the security problems and criminal activity associated with inmate telephone use, thereby improving the safe and secure operation of Bureau institutions. Consistent with correctional management objectives, these amendments are also intended to reduce generally the costs of telephone calls by providing for a direct-dial, debit-billing system now available through technological developments in the telephone and computer industries. This system allows the Bureau to more effectively carry out its long-standing rule that an inmate is responsible for the expenses of inmate telephone use. These amendments also give the Bureau more flexibility to efficiently manage inmate telephone use, thus enhancing the Bureau's ability to provide telephone access to inmates in a manner that facilitates other correctional management goals, such as encouraging inmates to be financially responsible. Finally, these amendments enable the Bureau to restrict and more effectively monitor inmate telephone use that may pose a threat to the security of the institution or the public.

EFFECTIVE DATE: May 4, 1994, except for §§ 540.105(c) and 545.11(d)(10) which become effective January 3, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, telephone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rules on Telephone Regulations and on the Inmate Financial Responsibility Program. A proposed rule on these subjects was published in the *Federal Register* July 21, 1993 (58 FR 39096). A summary of background information, public comment, and agency response follows.

Background/History of Inmate Telephone Privileges

The Bureau of Prisons ("Bureau") provides inmates with several means of communicating with the public. Primary among these is written correspondence, with visiting and telephone privileges serving as two supplemental means of communication. Although there is no Constitutional right for inmates to have unrestricted telephone communication with members of their families and the community, particularly when there are alternative channels of communication available, the Bureau provides inmates with telephone access consistent with the requirements of sound correctional management for the continually expanding inmate population.

Prior to the early 1970's, telephone privileges in Bureau institutions were determined by local policy, as set by each Warden. In 1973, the Bureau adopted a national policy to ensure telephone access to all inmates by permitting every inmate who was not restricted from telephone use to make at least one telephone call every quarter. During the mid-1970's, telephone privileges routinely consisted of one or two short telephone calls a month on institution telephones, placed and supervised by staff, and approved in advance.

In the late 1970's, the Bureau attempted to increase telephone access and reduce staff assistance by the installation of a collect call system which relied upon inmate use of unattended commercial equipment, tape recording, and operator-assisted services. This was the system in operation when the Bureau published its final rule on Telephone Regulations June 29, 1979 (44 FR 38249), with a subsequent amendment June 1, 1983 (48 FR 24622).

Purpose of the Amended Regulations

The former regulations, as cited above and as codified in 28 CFR part 540, subpart I, state that the inmate is responsible for the expenses of inmate

telephone use. This has been and remains, a major tenet of Bureau policy. However, at the time the former regulations were published, the Bureau had no practicable means of holding inmates directly responsible for the costs of their calls. Hence, those regulations recognized that inmate telephone calls would ordinarily be made collect to the party called.

Technological developments in the telephone and computer industries have now made it possible for the Bureau to install a debit-billing telephone system which allows the Bureau to more effectively carry out its rule that an inmate is responsible for the expenses of inmate telephone use. This system, known as the Inmate Telephone System (ITS), is similar to telephone systems used in many hotels where calls are direct-dialed after being processed through a switch and charged to the caller's bill.

These amended telephone regulations provide for the operation of the ITS and permit the Bureau to better address correctional management and security problems than with the collect call telephone system in place under the former regulations. These regulations therefore provide an important contribution to the goals of responsible correctional management in the following ways:

1. The amended regulations are intended to help teach inmates responsibility and management of resources. The former collect call system provides little or no incentive for inmates to shoulder personal responsibility for the costs of their telephone calls, as collect call billing shifts the costs to other parties. This excuses inmates from exercising a basic form of decision-making on how to spend their funds, a decision that must be made every day by other adults. The Bureau believes that encouraging inmates to face practical life-style choices is an integral part of the rehabilitation process. In recognizing the importance of developing this skill, the Bureau provides education programming for life-coping skills such as budgeting. This is consistent with the Bureau's statutory mandate, as set forth in 18 U.S.C. 4001 and 4042, to provide for inmates' "government, discipline, treatment, care, rehabilitation, and reformation."

By providing for the operation of a debit-billing system in which inmates are responsible for the cost of their telephone calls (unless there is good cause for the placement of a collect call or a compelling circumstance justifies the placement of a call at government expense), the amended regulations help

the Bureau to meet its statutory mandate. In order to exercise their telephone privileges, inmates will have to establish their priorities, purchase telephone credits at the prison commissary, and manage the expenditure of their telephone credits. Moreover, by taking responsibility for the costs of their telephone calls and managing their telephone credits, inmates gain an increased sense of control over their lives.

The switch from the former collect system to the debit billing ITS also provides an added incentive for inmates to obtain the higher-skilled and higher-paying prison work assignments. Through such work, inmates can develop occupational skills and the discipline of working on a regular basis, factors which contribute to an inmate's successful return to society. In recognition of this fact, the United States Congress has mandated work assignments for all inmates, except as necessitated by security considerations, disciplinary action, medical reasons, or other programming involvement. See 18 U.S.C. 4121; Public Law 101-647, 104 Stat. 4914. By providing an incentive to work to obtain money for telephone calls, the amended regulations and the ITS debit-billing system encourage the fulfillment of this Congressional objective.

2. The amended regulations are intended to increase the incentive for inmates to participate in the Inmate Financial Responsibility Program (IFRP), a program that encourages inmates to set and meet regular payment schedules, consistent with their resources, for their court-imposed fines, restitutions, and other financial obligations. The program stresses the importance of fiscal responsibility. See 28 CFR part 545 subpart B. The Bureau considers the inmate's efforts to fulfill financial obligations as indicative of the inmate's acceptance, and demonstrated level, of responsibility. This is one factor in determining an inmate's readiness to return to society.

Participation in the IFRP is voluntary, but inmates who refuse to participate are restricted in their commissary spending, not eligible to receive a furlough or consideration for community placement, and not permitted to work in Federal Prison Industries. These amended regulations add another restriction to this list: 28 CFR § 545.11(d)(10) provides that inmates who refuse to participate in the IFRP are allowed to place no more than one telephone call every month, at the inmate's expense, absent authorization from the Warden for additional inmate-paid calls based upon compelling

circumstances. Inmates who refuse to participate in the IFRP retain the same access as other inmates to unmonitored attorney calls arranged by unit staff. See re-designated 28 CFR 540.102 and 103, formerly §§ 540.101 and 102.

The Bureau's policy of offering inmates the choice of participating in the IFRP, with its clearly stated consequences, has been an effective means of helping inmates fulfill their legitimate financial obligations. Since its full implementation in 1987, through February, 1994, the IFRP has resulted in the collection of approximately \$81,000,000.00 toward payment of inmate fines, debts, and restitution to victims.

The Bureau notes that the IFRP, by assisting in the collection of fines and legal debts, helps to accomplish not only a major priority for the Department of Justice, but has also been upheld as serving the valid penological objective of rehabilitation by facilitating repayment of debts. See *Jahnpoll v. Thornburgh*, 898 F.2d 849 (2d Cir., 1990), cert. denied, 498 U.S. 819; *James v. Quinlan*, 866 F.2d 627, 630 (3rd Cir., 1989), cert. denied, 493 U.S. 870. By limiting the telephone privileges of inmates who refuse to participate in the IFRP, the Bureau is providing an additional incentive for inmates to pay their debts to society and is managing telephone privileges in a manner consistent with other privileges conditioned upon voluntary participation in the IFRP.

3. The amended regulations are designed to contribute to the safety and security of Bureau institutions by providing more equitable telephone access to the rapidly expanding inmate population. The Bureau of Prisons is faced with an unprecedented increase in population, leading to a substantial overcrowding of Bureau institutions and a considerable strain on already limited resources. On February 10, 1994, the Bureau had 82,426 inmates confined in 73 institutions. These institutions have a total rated capacity of approximately 60,571 inmates.

By explicitly authorizing the Warden to limit the maximum length of inmate telephone calls based on institution conditions, such as institution population or usage demand, the amended regulations increase the Bureau's ability to manage this large population by providing greater and more equitable telephone access to inmates. Under the former collect call system, it is very difficult for staff to enforce any time limits on inmate telephone calls. Some inmates are thus able to monopolize telephone use, increasing tensions in an overcrowded

inmate population. The ITS, in contrast, can be programmed to terminate a call automatically after the expiration of a certain period of time, ordinarily 15 minutes, so that the telephone will be available for use by another inmate.

In addition, it is reasonable to expect that debit-billing will affect the ability of some inmates to continue monopolizing the telephone. By having to pay for their calls directly, these inmates may be unable, or unwilling, to expend the funds to monopolize the telephone.

The amended regulations also help Bureau staff to more effectively prevent telephone use by those inmates who have abused their telephone privileges. Under the former system, if an inmate had abused his or her telephone privilege, for example, by using a telephone to engage in criminal activity, and had then undergone an administrative hearing affording limited due process, a Discipline Hearing Officer could restrict the inmate's use of the telephone for a given period of time. However, there was no effective way to enforce that sanction. The Bureau was forced to rely upon staff to observe the inmate using the telephone after the restriction had been imposed. Given the fact that the Bureau incarcerates as many as 2,000 inmates in one institution, and that inmate telephones may be in various locations within the institution, limited staff resources make it very difficult to conduct continuous surveillance of specific inmates with restricted telephone privileges. With the ITS, the Bureau can mechanically block the telephone calls of those inmates on telephone restriction.

4. The amended regulations better assist Bureau staff in detecting and preventing criminal activity facilitated through use of the telephone. The former collect call system is more easily used by inmates to direct criminal activity from prison, such as committing fraud, facilitating drug operations, intimidating witnesses, and managing the fruits of their crimes. Cases have been developed over the years which involve attempts by inmates to defraud members of the public and, in some cases, financial corporations. Examples include credit card fraud, securities fraud, and various forms of insurance and tax fraud.

This problem is not unique to the Bureau. In 1989, the telephone industry estimated an annual loss of \$150 million from institutional toll fraud, including that which occurs in prisons. Officials from Consolidated Communications, Inc., a long-distance carrier for 25 correctional facilities in Illinois, were quoted by United Press International on

July 5, 1993, as stating "[f]raud is rampant because inmates have found ways to outfox the system that makes them reverse charges on long-distance calls made from prison phones. Bills for up to 20 percent of the long-distance calls are uncollectable." The Bureau notes that these losses have prompted the telephone companies and several state and local correctional systems to look at ways to solve the problems associated with the collect call system.

By restricting the inmates' access to collect telephone service, the amended regulations should help substantially reduce the possibility that inmates will be able to reverse the charges or have their calls billed to a person who has no intention of paying the charges. In addition, the ITS provides increased assistance in the investigation of criminal activity, such as escape plots or plans to introduce contraband into prison.

The amended regulations also enable the Bureau to prevent an inmate or group of inmates from calling a specific telephone number. By doing so, the Bureau can better protect a victim, witness, or other member of the public from harassment, and can better prevent calls that pose a threat to institution security and good order or to the public. The ability to block recipient numbers also helps the Bureau prevent one inmate from calling another inmate's family, a method of intimidation or extortion between inmates. This capability is not available under the former collect call system.

In addition, by ordinarily restricting inmate calls to parties identified on the inmate's official telephone list (28 CFR 540.101(a)), the amended regulations should help reduce the possibility that inmates will use the telephone to engage in criminal activity or to harass people who do not want to receive their calls.

5. The amended regulations and direct-dial telephone service also provide inmates with several advantages over the former collect call system. Among these advantages are the following:

a. The amended regulations should facilitate more equitable access of the telephones for all inmates, by permitting the Warden to limit the maximum length of inmate telephone calls based upon institution conditions, such as institution population or usage demand. The ITS, which can be programmed to terminate a telephone call automatically after the expiration of a certain period of time, and which permits debit-billing from the inmates' trust fund accounts, should help reduce an inmate's ability to monopolize telephones, thereby

helping to ensure more equitable telephone access for all inmates.

b. Inmates may place direct-dialed international calls. This is a particular benefit to the large percentage of the Bureau inmate population (over twenty-five percent in June 1993) who are non-United States citizens with families in other countries. Many of these inmates had difficulty communicating by telephone with their families because telephone carriers do not always process international collect calls. Some of the inmate commenters acknowledged this problem by stating that their home countries did not accept collect calls.

c. Inmates may place direct-dialed calls to persons who cannot accept collect calls because, for example, their home telephones have been restricted by their telephone service company from receiving collect calls, or their workplaces do not accept collect calls. Similarly, inmates may call offices, such as their children's schools, which may not accept collect calls.

d. Unlike operator-assisted collect calls, inmates making direct-dialed calls have a greater opportunity to leave a message with the person who answers the telephone or, in some cases, on the answering machine of the person called. One of the inmate commenters acknowledged this by listing several examples of instances where he may not be able to make contacts through the collect call system.

3. The amended regulations will help assist staff in contacting inmates' families in emergency situations. Because many inmates are serving long sentences, the telephone numbers and addresses given upon initial incarceration may no longer be valid. As a result, staff have had difficulty locating next of kin for seriously ill inmates, or in other emergency situations. The inmate telephone lists required by the amended regulations will provide staff with a list of up-to-date telephone numbers for each inmate.

The amended regulations help satisfy the above-listed correctional management objectives, which are consistent with the statutory responsibility of the Attorney General, as set forth in 18 U.S.C. 4001 and 4042, and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96. Paragraph (p) of Section 0.96 empowers the Director to promulgate rules governing the control and management of Federal penal and correctional institutions and providing for the classification, government, discipline, treatment, care, rehabilitation, and reformation of inmates confined within those facilities.

Response to Public Comments

Comments on the proposed rule were received from inmates, members of the general public, and other interested parties. The majority of inmate comments consisted of form letters from one institution. A summary of the comments and response to these follow.

1. Use of Commissary Trust Fund

A commenter disagreed with the proposed rule, suggesting that the Bureau of Prisons is not expending the Commissary Trust Fund profits in accordance with the terms of the trust, pursuant to 31 U.S.C. 1321(b) (1993). This commenter expressed a belief that all federal inmates are the beneficiaries of the trust and any expenditure must benefit the inmate population "as a whole." In this commenter's view, the ITS does not benefit all inmates and, thus, is not a proper expenditure from the trust.

The Bureau disagrees with this comment. The Commissary Trust Fund, and the commissary system that it finances, were established to further the Bureau's security and correctional management goals by permitting inmates to purchase goods and services not regularly provided by the Bureau. To encourage inmate financial responsibility and to further the Bureau's other correctional management and security concerns discussed above, it is appropriate to charge inmates for the costs of their telephone calls. In addition, inmates have no entitlement to a telephone system provided at government expense. It is, therefore, appropriate to charge inmates for the costs of their telephone calls, to deposit the revenue from the inmate telephone calls into the Commissary Trust Fund, and to use Commissary Trust Fund revenues to pay for the expenses of the ITS telephone system.

The operation of the ITS through the Commissary Trust Fund will also benefit the inmate body as a whole because the ITS telephone rates, like the prices for other goods and services sold in Bureau commissaries, are designed to cover the cost of providing the service and to leave a profit in the Commissary Trust Fund. Thus, after the ITS is fully operational and start-up expenses have been recouped, the ITS is expected to increase the amount of Commissary Trust Fund money available for the procurement of books, recreational equipment, or other items that benefit the inmate population as a whole.

Furthermore, the trust documents establishing the Commissary Trust Fund, Department of Justice Circular 2126 (1930) and Department of Justice